


UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

08/465,747 06/06/95 BROWN

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/465,747	06/06/95	INTELLECTUAL PROPERTY GROUP GRAHAM & JAMES LLP 885 THIRD AVENUE, 24TH FLOOR NEW YORK NY 10022-4834	MOSHER, M

1815	EXAMINER
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	06/23/97 PAPER NUMBER 25
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25

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

The office action mailed February 19, 1997 is hereby withdrawn, so that prosecution in application 08/467,747 may be suspended for potential interference. Applicant need not respond to the issues in that action. Claims 51 and 52 are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is (703) 308-2926. The examiner can normally be reached on Monday -Thursday and alternate Fridays from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knode, can be reached on (703) 308-4311. A fax phone number for this Group is (703) 305-7939.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

June 18, 1997

MARY E. MOSHER
PRIMARY EXAMINER
GROUP 1800



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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1815	EXAMINER
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06/23/97	
	PAPER NUMBER 26

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Claims 51 and 52 are allowable. However, due to a potential interference, *ex parte* prosecution is SUSPENDED. The outcome of interference has a material bearing on the patentability of the claims in this application. Prosecution in this application is SUSPENDED pending a final judgment in the interference.

Applicant should call this case up for action upon termination of the interference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is (703) 308-2926. The examiner can normally be reached on Monday -Thursday and alternate Fridays from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knode, can be reached on (703) 308-4311. A fax phone number for this Group is (703) 305-7939.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196 .

June 18, 1997

MARY E. MOSHER
PRIMARY EXAMINER
GROUP 1800

INTERFERENCE DIGEST

Interference No. 104,149 Paper No. 26

Name, BROWN

Serial No. 08/465,747 Patent No. _____

Title, Human Parvovirus B19 Proteins and Virus-Like Particles, Their
Production and Their Use In Diagnostic Assays and Vaccines

Filed, 06/06/95

Interference with Young et al.

DECISION ON MOTIONS

Examiner-in-Chief, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, Adverse Dated, 1/7/99

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.

☆ U.S. GPO: 1997-417-376/50308

8. Identification of Drawings. 37 CFR 1.84(i)
☐ Extraneous Matter or Copy Machine
Marks Not Allowed. Etc(s)

☐ Solid Black Shading Not Allowed.
Etc(s)

All communications respecting this case should identify it by number and names of parties

Filed by: Richard Torczon
Administrative Patent Judge
Telephone: 703-308-9797
Facsimile: 703-308-7953



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
BOX INTERFERENCE
Washington, D.C. 20231

Paper No. 1

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

NEAL S. YOUNG, SACHIKO KAJIGAYA,
and TAKASHI SHIMADA,

Junior Party,

v.

CAROLINE S. BROWN,

Senior Party.

Patent Interference No. 104,149

INITIAL NOTICES AND ORDER

NOTICE DECLARING INTERFERENCE

I have been designated to declare and administer this interference. 37 CFR § 1.610. Pursuant to 37 CFR § 1.611(a), I declare an interference between the captioned parties. 35 U.S.C. § 135(a).

Appendix I provides additional information required under 37 CFR § 1.611(c). A copy of Form PTO-850 and the examiner's statement is also attached. This proceeding is governed by the procedures set forth at 37 CFR § 1.601 et seq. The accompanying order under 37 CFR § 1.610 sets forth additional requirements specific to this proceeding.

Interference No. 104,149
Young et al. v. Brown

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NOTICE PURSUANT TO 35 U.S.C. § 135(c)

The parties should note the requirement to file in the Patent and Trademark Office a true copy in writing of any ~~agreement or understanding between the parties, including~~ collateral agreements, made with or in contemplation of the termination of this proceeding. Failure to comply with this requirement will render such agreements and any resulting patents unenforceable. See also 37 CFR § 1.690 (arbitration).

ORDER

Upon consideration of the record of this interference, including the underlying patent and applications, I order the following:

Communications with the Board

1. All communications with me must be in writing and served on the other party or must include counsel for both parties.
2. The delivery addresses for the Board of Patent Appeals and Interferences ("Board") are:

By mail: BOX INTERFERENCE
Commissioner of Patents and Trademarks
Washington, DC 20231

By hand: Board of Patent Appeals and Interferences
Crystal Gateway Two, 10th Floor
1225 Jefferson Davis Highway
Arlington, Virginia 22202

By facsimile: 703-308-7952

3. Conferences with me will be conducted by conference call involving both parties. Conferences must be arranged in advance through the Board's administrators, who may be reached at 703-305-9797. ~~Simple inquiries should be directed to the Board's~~ administrators.

4. The parties may not initiate a communication with any other member of the Board regarding this interference.

Communications between the parties

5. Within 20 days of the date of this order, each party must serve a copy of its involved files on opposing counsel.

6. All papers served on opposing counsel must be served by the United States Postal Service Express Mail service, 37 CFR § 1.646(d), unless the parties agree to use a comparable (one day or better) delivery method.

Initial filings

7. Notice of receipt. Within 20 days of the date of this order, each party must file a separate paper stating when the party received the notice of declaration.

8. Notice of lead and backup counsel. Within 20 days of the date of this order, each party must identify in a separate paper a lead counsel and a backup lead counsel, as well as the mailing address, telephone number, and facsimile number for both lead counsel and backup counsel. 37 CFR § 1.613.

9. Notice of the real party in interest. Within 20 days of the date of this order, each party must identify in a separate

Interference No. 104,149
Young et al. v. Brown

Page 4

paper any right, title, or interest in any application involved in this interference. 37 CFR § 1.602.

10. Notice of other proceedings. Within 20 days of the date of this order, ~~each party must~~ identify in a separate paper every related proceeding, past or present, before any authority.

11. Electronic copies of the specifications and claims. Within 20 days of the date of this order, each party must file an electronic copy of each involved specification and claim.

12. Notice of copy request. Within 25 days of the date of this order each party must file a separate paper stating that the party has requested any necessary papers from the Dissemination Support Division (DSD).¹

¹ Failure to request copies very early in the proceeding may significantly delay the resolution of the interference. The Board does not provide or sell copies of interference files or the application or patent files involved in interferences. Copies may be purchased from DSD, 2183 Crystal Plaza Arcade, PTO Copy Sales Center, (703) 305-8990, Fax (703) 308-5257. DSD's mailing address is

Commissioner of Patents and Trademarks
Box 9
Washington, D.C. 20231
Attention: DSD File Copy

The DSD contact person is Teresa Knight ((703) 305-4311). Requests for copies shall not be filed with the Board unless ordered by an APJ. The parties are advised that interference files do not include the involved application or patent files. Requests for copies must specifically identify the serial number, patent number or interference number of all desired files. Because of the confidentiality provisions of 35 U.S.C. § 122 and 37 CFR §§ 1.11(e) and 1.14, requests for copies of pending applications or interference files must be accompanied with proof that the requester is authorized to have access to the files (e.g., copy of the power of attorney, power to inspect, or interference declaration, as appropriate). Failure to provide all necessary information with the request will delay obtaining copies or result in a denial of the request.

Formal requirements for filings

13. All papers filed with the Board on behalf of a party in this proceeding must include the caption shown in Appendix II.

~~14. Papers must have a simple descriptive title, e.g.,~~
"Brown's Preliminary Motion No. 2". Duplicate titles are not permitted.

15. Papers must not be combined. For example, an opposition may not be combined with a motion; each must be filed separately.

16. All papers in this proceeding must be filed on A4 or 8½" x 11" paper. All filed papers must have two holes punched at the top, spaced 7 cm (2¾") apart and centered on the width of the page, for placement in the interference files.

17. Each paper filed with the Board must include a copy marked "COPY FOR THE APJ".

18. The parties may not file copies of papers previously filed papers. 37 CFR § 1.618(b). This prohibition extends to copies placed in appendices and exhibits.

19. Each motion or responsive paper should include an electronic copy of the filing.

20. Electronic copies should be in one of the following formats (in order of preference): WordPerfect 6.1, Microsoft Word 7.0a, Rich-text format, or ASCII. The electronic copy should be provided on a Microsoft DOS-formatted 8.9 cm (3½") diskette.

21. Case citations must include, where available, parallel citations to a West Publishing report (e.g., Federal Reports or Federal Supplement Reports) and the Bureau of National Affairs' ~~United States Patents Quarterly~~.

Filing dates

22. I will initiate a conference call with the parties to set dates for filing preliminary statements and preliminary motions and to take other appropriate action on 2 April 1998 at 1:00 p.m. (Eastern Time). See 37 CFR §§ 1.610(c), 1.621-1.628, 1.633, 1.634, and 1.637. Counsel should promptly check their calendars to determine whether this conference date will create a hardship.



RICHARD TORCZON
Administrative Patent Judge

Interference No.104,149
Young et al. v. Brown

APPENDIX I

A. Additional Rule 611(c) data for Young et al.

Junior Party: NEAL S. YOUNG
2200 17th Street, N.W.
Washington, DC 20011

SACHIKO KAJIGAYA
10201 Grosvenor Place #807
Rockville, MD 20852

and

TAKASHI SHIMADA
10670 Waymouth Street
Bethesda, MD 20814

Attorneys: Robert Benson, John E. Tarcza, Paul N. Kokullis,
Mary J. Wilson, Reid Adler, Gloria H. Richmond
and Watson T. Scott

Associates: Kurt E. Richter, Eugene Moroz, William S.
Feiler, Israel Blum, Bartholomew Verdirame,
Maria C. H. Lin, Christopher E. Chalsen,
Eugene C. Rzucidlo, Mary J. Morry, Kathryn M.
Brown, Leslie A. Serunian, Dorothy R. Auth,
Richard W. Bork, David V. Rossi, Jean E.
Shimotake, M. Caragh Noone, Carol M. Gruppi

Assignee: None of record.

Application: 08/407,939, filed 21 March 1995

For: PARVOVIRUS CAPSIDS

Benefit: 07/612,672, filed 14 November 1990, now U.S.
Patent No. 5,508,186, granted 16 April 1996

Address: William S. Feiler, Esq.
Morgan & Finnegan, L.L.P.
345 Park Avenue
New York, NY 10154

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Young et al. v. Brown

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B. Additional Rule 611(c) data for Brown

Senior Party: CAROLINE S. BROWN
Frans van Mierissstraat 85 huis
Amsterdam, NETHERLANDS 1071 RM

Attorneys: Thomas F. Moran, Christopher C. Dunham, Ivan
S. Kavrukov, Albert L. Jacobs, Jr., Jesse D.
Reingold, and Mark H. Sparrow

Assignee: None of record.

Application: 08/465,747, filed 6 June 1995

Benefit: 08/242,023, filed 11 May 1994;
07/838,715, filed 4 June 1992; and
PCT/NL90/00130, filed 11 September 1990.

For: HUMAN PARVOVIRUS B19 PROTEINS AND VIRUS-LIKE
PARTICLES, THEIR PRODUCTION AND THEIR USE IN
DIAGNOSTIC ASSAYS AND VACCINES

Address: Intellectual Property Department
Rosenman & Colin
575 Madison Avenue
New York, NY 10022

Interference No.104,149
Young et al. v. Brown

Appendix I, page 3

C. Count I is:

(08/407,939, claim 42)

An isolated empty B19 parvovirus capsid consisting of VP2 major structural protein.

-or-

(08/465,747, claim 51)

Recombinant virus-like particles consisting of the VP2 capsid protein of the human parvovirus B19.

Corresponding claims

Young et al.: 10, 32, 34-39, and 42 of 08/407,939.

Brown: 49-53 of 08/465,747.

D. Count II is:

(08/407,939, claim 40)

A method of producing isolated empty B19 parvovirus capsids consisting of VP2 major structural protein, comprising the steps of:

- i) infecting insect cells with a recombinant baculovirus encoding the B19 VP2 major structural protein;
- ii) culturing the cells under conditions such that the VP2 major structural proteins are produced and self assemble to form the capsids; and
- iii) isolating the capsids.

-or-

(08/461,988, claim 53)

A method of producing virus-like particles consisting of VP2 capsid protein of the human parvovirus B19, by culturing Spodoptera frugiperda cells containing a baculovirus-expression vector system containing the genetic information that is necessary

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Young et al. v. Brown

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for expression of the B19 VP2 capsid protein, wherein virus-like particles consisting of VP2 protein are isolated from the cells.

Corresponding claims

Young et al.: 40 of 08/407,939.

Brown: 16-22, 49-51, and 53 of 08/461,988.

E. Count III is:

(08/407,939, claim 41)

An assay for detecting antibodies to B19 parvovirus comprising:

i) contacting a biological sample containing antibodies with B19 parvovirus with isolated empty B19 parvovirus capsids consisting of VP2 major structural protein, and

ii) detecting the formation of a complex between anti-B19 antibodies present in said sample and said capsids.

-or-

(08/465,557, claim 63)

A method for detecting antibodies directed against the human parvovirus B19, which comprises contacting a sample to be tested with an antigen and detecting the presence of B19 antibodies bound to said antigen, wherein said antigen is virus-like particles consisting of the VP2 capsid protein of the human parvovirus B19.

Corresponding claims

Young et al.: 41 of 08/407,939.

Brown: 49-54, 59, and 63 of 08/465,557.

APPENDIX II

The following caption is required on all papers filed by a party. Bracketed material must be replaced with the indicated information.

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BOARD OF PATENT APPEALS AND INTERFERENCES
(APJ Richard Torczon)

NEAL S. YOUNG, SACHIKO KAJIGAYA,
and TAKASHI SHIMADA,

Junior Party,

v.

CAROLINE S. BROWN,

Senior Party:

Patent Interference No. 104,149

[TITLE OF PAPER]

Filed on behalf of Party [e.g., Brown]

By:

[Name of lead counsel]

[Name of backup counsel]

[Street address]

[City, State, Zip code]

[Telephone number]

[Facsimile number]

The following provisions are applicable to the captioned interference before Administrative Patent Judge Richard Torczon. The checklist is provided as a courtesy for the parties to fill out as they wish; in the event of a conflict between the checklist and a Board order, the order controls.

- All communications with APJ Torczon must include all parties.
- To schedule a conference, call Merrell Cashion, Amalia Santiago, or Dale Shaw at 703-308-9797.
- DO NOT CONTACT ANY OTHER APJ.

Filing of papers

You may file papers by facsimile to 703-308-7953.

- Do not file a confirmation copy.
- Retain a signed original in your records.
- File an original and a copy marked "COPY FOR THE APJ".
- File all papers on A4 or 8½" x 11" paper.
- Papers must have two holes punched at the top center of each page, 7 cm (2¾") apart.
- Do not file duplicates (of any paper previously filed in this interference).
- Use the required caption (see attachment) on all filings.
- With each paper filed, include a Microsoft DOS-formatted 8.9 cm (3½") diskette with a WordPerfect 6.1, Microsoft Word 7.0a, RTF, or ASCII version of the paper.

Filing of motions

- Do not file combined motions, oppositions, and replies.
- Provide parallel citations, including pinpoint (jump) citations, to both the West Reporter system and the United States Patents Quarterly (BNA) system.

Do not exceed the following page limits (excluding captions, tables of content or authorities, and exhibits):

- ___ pages per motion.
- ___ pages per opposition.
- ___ pages per reply.

Filing of exhibits

- File exhibits at the Board at the end of the motions period, not with each paper.

Service of papers on opposing parties

- Serve opposing parties by a one-day delivery method.

Procedural filings

- _____ - Notice of receipt of the notice declaring this interference.
- _____ - Identification of counsel.
- _____ - Identification of the real party in interest.
- _____ - Notice of other related proceedings.
- _____ - Notice that copies of files have been requested from DSD.
- _____ - Copy of specification and claims as allowed or issued on DOS-formatted 8.9 cm (3½") diskette.
- _____ - Non-technical summary of the invention.
- _____ - Response to non-technical summary of the invention.
- _____ - Copies of all patents and literature mentioned in each party's patent or application, including translations of documents not in English and electronic copies where available.

Filing of preliminary statements and motions

- _____ - Preliminary statement.
- _____ - Service of preliminary statement on opponent.
- _____ - Notice of service.
- _____ - Preliminary motions (37 CFR § 1.633(a)-(h)).
- _____ - Preliminary motions (37 CFR § 1.633(i) & (j)).
- _____ - Oppositions to preliminary motions (37 CFR § 1.633(a)-(h)).
- _____ - Oppositions to preliminary motions (37 CFR § 1.633(i) & (j)).
- _____ - Replies to oppositions to preliminary motions (37 CFR § 1.633(a)-(h)).
- _____ - Replies to oppositions to preliminary motions (37 CFR § 1.633(i) & (j)).

Final hearing

- _____ - Target date for final hearing.